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1ST SESSION

H. R. 617

IN THE SENATE OF THE UNITED STATES

MARCH 3, 1993

Received; read twice and referred to the Committee on Banking, Housing, and
Urban Affairs

AN ACT

To amend the Securities Exchange Act of 1934 to protect
investors in limited partnerships in rollup transactions,
and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Limited Partnership
5 Rollup Reform Act of 1993”.

1 **SEC. 2. REVISION OF PROXY SOLICITATION RULES WITH**
2 **RESPECT TO LIMITED PARTNERSHIP ROLLUP**
3 **TRANSACTIONS.**

4 (a) AMENDMENT.—Section 14 of the Securities Ex-
5 change Act of 1934 (15 U.S.C. 78n) is amended by adding
6 at the end the following new subsection:

7 “(h) PROXY SOLICITATIONS AND TENDER OFFERS
8 IN CONNECTION WITH LIMITED PARTNERSHIP ROLLUP
9 TRANSACTIONS.—

10 “(1) PROXY RULES TO CONTAIN SPECIAL PRO-
11 VISIONS.—It shall be unlawful for any person to so-
12 licit any proxy, consent, or authorization concerning
13 a limited partnership rollup transaction, or to make
14 any tender offer in furtherance of a limited partner-
15 ship rollup transaction, unless such transaction is
16 conducted in accordance with rules prescribed by the
17 Commission under subsections (a) and (d) as re-
18 quired by this subsection. Such rules shall—

19 “(A) permit any holder of a security that
20 is the subject of the proposed limited partner-
21 ship rollup transaction to engage in preliminary
22 communications for the purposes of determining
23 whether to solicit proxies, consents, or author-
24 izations in opposition to the proposed trans-
25 action, without regard to whether any such
26 communication would otherwise be considered a

1 solicitation of proxies, and without being re-
2 quired to file soliciting material with the Com-
3 mission prior to making that determination, ex-
4 cept that nothing in this subparagraph shall be
5 construed to limit the application of any provi-
6 sion of this title prohibiting, or reasonably de-
7 signed to prevent, fraudulent, deceptive, or ma-
8 nipulative acts or practices under this title;

9 “(B) require the issuer to provide to hold-
10 ers of the securities that are the subject of the
11 transaction such list of the holders of the issu-
12 er’s securities as the Commission may deter-
13 mine in such form and subject to such terms
14 and conditions as the Commission may specify;

15 “(C) prohibit compensating any person so-
16 liciting proxies, consents, or authorizations di-
17 rectly from security holders concerning such a
18 transaction—

19 “(i) on the basis of whether the solici-
20 ited proxies, consents, or authorizations ei-
21 ther approve or disapprove the proposed
22 transaction; or

23 “(ii) contingent on the transaction’s
24 approval, disapproval, or completion;

1 “(D) set forth disclosure requirements for
2 soliciting material distributed in connection
3 with a limited partnership rollup transaction,
4 including requirements for clear, concise, and
5 comprehensible disclosure with respect to—

6 “(i) any changes in the business plan,
7 voting rights, form of ownership interest or
8 the general partner’s compensation in the
9 proposed limited partnership rollup trans-
10 action from each of the original limited
11 partnerships;

12 “(ii) the conflicts of interest, if any, of
13 the general partner;

14 “(iii) whether it is expected that there
15 will be a significant difference between the
16 exchange values of the limited partnerships
17 and the trading price of the securities to
18 be issued in the limited partnership rollup
19 transaction;

20 “(iv) the valuation of the limited part-
21 nerships and the method used to determine
22 the value of limited partners’ interests to
23 be exchanged for the securities in the lim-
24 ited partnership rollup transaction;

1 “(v) the differing risks and effects of
2 the transaction for investors in different
3 limited partnerships proposed to be in-
4 cluded, and the risks and effects of com-
5 pleting the transaction with less than all
6 limited partnerships;

7 “(vi) a statement by the general part-
8 ner as to whether the proposed limited
9 partnership rollup transaction is fair or
10 unfair to investors in each limited partner-
11 ship, a discussion of the basis for that con-
12 clusion, and the general partner’s evalua-
13 tion, and a description of alternatives to
14 the limited partnership rollup transaction,
15 such as liquidation; and

16 “(vii) such other matters deemed nec-
17 essary or appropriate by the Commission.

18 “(E) provide that such soliciting materials
19 contain or be accompanied by an opinion on the
20 fairness of the proposed transaction to holders
21 of each security which is subject to the pro-
22 posed transaction that—

23 “(i) includes such information, rep-
24 resentations, and undertakings with re-
25 spect to the analysis of the transaction,

1 scope of review, preparation of the opinion,
2 and basis for and methods of arriving at
3 conclusions as the Commission may require
4 in such rules; and

5 “(ii) is prepared by a person—

6 “(I) who does not receive any
7 compensation that is contingent on
8 the transaction’s approval or comple-
9 tion;

10 “(II) who meets such additional
11 standards of independence from the
12 person or persons proposing the rollup
13 transaction as shall be required in the
14 rules prescribed by the Commission;

15 “(III) who has been given access
16 by the issuer to its personnel and
17 premises and relevant books and
18 records; and

19 “(IV) who has represented to
20 have undertaken an independent anal-
21 ysis of the fairness of the proposed
22 rollup transaction to holders based
23 upon the information obtained
24 through such access and upon other
25 independently obtained information;

1 “(F) require that the soliciting material in-
2 clude a clear and concise summary of the lim-
3 ited partnership rollup transaction (including a
4 summary of the matters referred to in clauses
5 (i) through (vi) of subparagraph (D) and a
6 summary of the matter referred to in subpara-
7 graph (E)), with the risks of the limited part-
8 nership rollup transaction set forth prominently
9 in the forepart thereof;

10 “(G) provide that any solicitation or offer-
11 ing period with respect to any proxy solicita-
12 tion, tender offer, or information statement in
13 a limited partnership rollup transaction shall be
14 for not less than the lesser of 60 calendar days
15 or the maximum number of days permitted
16 under applicable State law; and

17 “(H) contain such other provisions as the
18 Commission determines to be necessary or ap-
19 propriate for the protection of investors in lim-
20 ited partnership rollup transactions.

21 “(2) EXEMPTIONS.—The Commission may, con-
22 sistent with the public interest, the protection of in-
23 vestors, and the purposes of this Act, exempt by rule
24 or order any security or class of securities, any
25 transaction or class of transactions, or any person or

1 class of persons, in whole or in part, conditionally or
2 unconditionally, from the requirements imposed pur-
3 suant to paragraph (1) or from the definition con-
4 tained in paragraph (4).

5 “(3) EFFECT ON COMMISSION AUTHORITY.—
6 Nothing in this subsection limits the authority of the
7 Commission under subsection (a) or (d) or any other
8 provision of this title or precludes the Commission
9 from imposing, under subsection (a) or (d) or any
10 other provision of this title, a remedy or procedure
11 required to be imposed under this subsection.

12 “(4) DEFINITION OF LIMITED PARTNERSHIP
13 ROLLUP TRANSACTION.—As used in this subsection,
14 the term ‘limited partnership rollup transaction’
15 means, except as provided in paragraph (5), a trans-
16 action involving—

17 “(A) the combination or reorganization of
18 limited partnerships, directly or indirectly, in
19 which some or all investors in the limited part-
20 nerships receive new securities or securities in
21 another entity, other than a transaction—

22 “(i) in which—

23 “(I) the investors’ limited part-
24 nership securities are reported under
25 a transaction reporting plan declared

1 effective before January 1, 1991, by
2 the Commission under section 11A;
3 and

4 “(II) the investors receive new
5 securities or securities in another en-
6 tity that are reported under a trans-
7 action reporting plan declared effec-
8 tive before January 1, 1991, by the
9 Commission under section 11A;

10 “(ii) involving only issuers that are
11 not required to register or report under
12 section 12 both before and after the trans-
13 action;

14 “(iii) in which the securities to be is-
15 sued or exchanged are not required to be
16 and are not registered under the Securities
17 Act of 1933;

18 “(iv) which will result in no signifi-
19 cant adverse change to investors in any of
20 the limited partnerships with respect to
21 voting rights, the term of existence of the
22 entity, management compensation, or in-
23 vestment objectives; or

24 “(v) where each investor is provided
25 an option to receive or retain a security

1 under substantially the same terms and
2 conditions as the original issue; or

3 “(B) the reorganization of a single limited
4 partnership in which some or all investors in
5 the limited partnership receive new securities or
6 securities in another entity, and—

7 “(i) transactions in the security issued
8 are reported under a transaction reporting
9 plan declared effective before January 1,
10 1991, by the Commission under section
11 11A;

12 “(ii) the investors’ limited partnership
13 securities are not reported under a trans-
14 action reporting plan declared effective be-
15 fore January 1, 1991, by the Commission
16 under section 11A;

17 “(iii) the issuer is required to register
18 or report under section 12, both before and
19 after the transaction, or the securities to
20 be issued or exchanged are required to be
21 or are registered under the Securities Act
22 of 1933;

23 “(iv) there are significant adverse
24 changes to security holders in voting
25 rights, the term of existence of the entity,

1 management compensation, or investment
2 objectives; and

3 “(v) investors are not provided an op-
4 tion to receive or retain a security under
5 substantially the same terms and condi-
6 tions as the original issue.

7 “(5) EXCLUSION FROM DEFINITION.—As used
8 in this subsection, the term ‘limited partnership roll-
9 up transaction’ does not include a transaction that
10 involves only a limited partnership or partnerships
11 having an operating policy or practice of retaining
12 cash available for distribution and reinvesting pro-
13 ceeds from the sale, financing, or refinancing of as-
14 sets in accordance with such criteria as the Commis-
15 sion determines appropriate.

16 “(6) DEFINITION OF PARTNERSHIP.—The term
17 ‘partnership’ includes such other entity having a
18 substantially economically equivalent form of owner-
19 ship instrument as the Commission determines, by
20 rule consistent with the purposes of this subsection,
21 to include within this definition.”.

22 (b) SCHEDULE FOR REGULATIONS.—The Securities
23 and Exchange Commission shall, not later than 12 months
24 after the date of enactment of this Act, conduct rule-
25 making proceedings and prescribe final regulations under

1 the Securities Act of 1933 and the Securities Exchange
2 Act of 1934 to implement the requirements of section
3 14(h) of the Securities Exchange Act of 1934, as amended
4 by subsection (a).

5 **SEC. 3. RULES OF FAIR PRACTICE IN ROLLUP TRANS-**
6 **ACTIONS.**

7 (a) REGISTERED SECURITIES ASSOCIATION RULE.—
8 Section 15A(b) of the Securities Exchange Act of 1934
9 (15 U.S.C. 78o-3(b)) is amended by adding at the end
10 the following new paragraph:

11 “(12) The rules of the association to promote
12 just and equitable principles of trade, as required by
13 paragraph (6), include rules to prevent members of
14 the association from participating in any limited
15 partnership rollup transaction (as such term is de-
16 fined in paragraphs (4) and (5) of section 14(h)) un-
17 less such transaction was conducted in accordance
18 with procedures designed to protect the rights of
19 limited partners, including—

20 “(A) the right of dissenting limited part-
21 ners to the following: (i) an appraisal and com-
22 pensation, or (ii) if the association finds that
23 granting the rights under clause (i) of this sub-
24 paragraph would be infeasible or not in the fi-
25 nancial interest of the dissenting limited part-

1 ners, other comparable rights designed to pro-
2 tect dissenting limited partners, which may in-
3 clude the rights set forth in subparagraph (B);

4 “(B) when the association determines it to
5 be necessary to the protection of such rights,
6 the use of a committee that is independent, as
7 determined in accordance with rules prescribed
8 by the association, of the general partner or
9 sponsor and that would have the authority to
10 protect the interest of limited partners, includ-
11 ing (but not limited to) the authority (but not
12 the obligation) to hire independent advisors to
13 represent all limited partners at the partner-
14 ship’s expense, to negotiate the proposed trans-
15 action with the general partner or sponsor on
16 behalf of the limited partners, and to make a
17 recommendation to the limited partners with re-
18 spect to the proposed transaction, but not the
19 authority to provide consents or authorizations
20 to the proposed transaction on behalf of limited
21 partners;

22 “(C) the right not to have their voting
23 power unfairly reduced or abridged;

1 “(D) the right not to bear an unfair por-
2 tion of the costs of a proposed rollup trans-
3 action that is rejected; and

4 “(E) restrictions on the conversion of con-
5 tingent interests or fees into non-contingent in-
6 terests or fees and restrictions on the receipt of
7 a non-contingent equity interest in exchange for
8 fees for services which have not yet been pro-
9 vided.

10 As used in this paragraph, the term ‘dissenting lim-
11 ited partner’ means a holder of a beneficial interest
12 in a limited partnership that is the subject of a lim-
13 ited partnership rollup transaction who casts a vote
14 against the transaction and complies with proce-
15 dures established by the association, except that for
16 purposes of an exchange or tender offer, such term
17 means any person who files an objection in writing
18 under the rules of the association during the period
19 in which the offer is outstanding and complies with
20 such other procedures established by the associa-
21 tion.”.

22 (b) LISTING STANDARDS OF NATIONAL SECURITIES
23 EXCHANGES.—Section 6(b) of the Securities Exchange
24 Act of 1934 (15 U.S.C. 78f(b)) is amended by adding at
25 the end the following:

1 “(9) The rules of the exchange prohibit the list-
2 ing of any security issued in a limited partnership
3 rollup transaction (as such term is defined in para-
4 graphs (4) and (5) of section 14(h)), unless such
5 transaction was conducted in accordance with proce-
6 dures designed to protect the rights of limited part-
7 ners, including—

8 “(A) the right of dissenting limited part-
9 ners to the following: (i) an appraisal and com-
10 pensation, or (ii) if the exchange finds that
11 granting the rights under clause (i) of this sub-
12 paragraph would be infeasible or not in the fi-
13 nancial interest of the dissenting limited part-
14 ners, other comparable rights designed to pro-
15 tect dissenting limited partners, which may in-
16 clude the rights set forth in subparagraph (B);

17 “(B) when the exchange determines it to
18 be necessary to the protection of such rights,
19 the use of a committee that is independent, as
20 determined in accordance with rules prescribed
21 by the exchange, of the general partner or spon-
22 sor and that would have the authority to pro-
23 tect the interest of limited partners, including
24 (but not limited to) the authority (but not the
25 obligation) to hire independent advisors to rep-

1 resent all limited partners at the partnership's
2 expense, to negotiate the proposed transaction
3 with the general partner or sponsor on behalf of
4 the limited partners, and to make a rec-
5 ommendation to the limited partners with re-
6 spect to the proposed transaction, but not the
7 authority to provide consents or authorizations
8 to the proposed transaction on behalf of limited
9 partners;

10 “(C) the right not to have their voting
11 power unfairly reduced or abridged;

12 “(D) the right not to bear an unfair por-
13 tion of the costs of a proposed rollup trans-
14 action that is rejected; and

15 “(E) restrictions on the conversion of con-
16 tingent interests or fees into non-contingent in-
17 terests or fees and restrictions on the receipt of
18 a non-contingent equity interest in exchange for
19 fees for services which have not yet been pro-
20 vided.

21 As used in this paragraph, the term ‘dissenting lim-
22 ited partner’ means a holder of a beneficial interest
23 in a limited partnership that is the subject of a lim-
24 ited partnership transaction who casts a vote against
25 the transaction and complies with procedures estab-

1 lished by the exchange, except that for purposes of
2 an exchange or tender offer, such term means any
3 person who files an objection in writing under the
4 rules of the exchange during the period in which the
5 offer is outstanding.”.

6 (c) STANDARDS FOR AUTOMATED QUOTATION SYS-
7 TEMS.—Section 15A(b) of the Securities Exchange Act of
8 1934 (15 U.S.C. 78o-3(b)) is amended by adding at the
9 end the following new paragraph:

10 “(13) The rules of the association prohibit the
11 authorization for quotation on an automated
12 interdealer quotation system sponsored by the asso-
13 ciation of any security designated by the Commis-
14 sion as a national market system security resulting
15 from a limited partnership rollup transaction (as
16 such term is defined in paragraphs (4) and (5) of
17 section 14(h)), unless such transaction was con-
18 ducted in accordance with procedures designed to
19 protect the rights of limited partners, including—

20 “(A) the right of dissenting limited part-
21 ners to the following: (i) an appraisal and com-
22 pensation, or (ii) if the association finds that
23 granting the rights under clause (i) of this sub-
24 paragraph would be infeasible or not in the fi-
25 nancial interest of the dissenting limited part-

1 ners, other comparable rights designed to pro-
2 tect dissenting limited partners, which may in-
3 clude the rights set forth in subparagraph (B);

4 “(B) when the association determines it to
5 be necessary to the protection of such rights,
6 the use of a committee that is independent, as
7 determined in accordance with rules prescribed
8 by the association, of the general partner or
9 sponsor and that would have the authority to
10 protect the interest of limited partners, includ-
11 ing (but not limited to) the authority (but not
12 the obligation) to hire independent advisors to
13 represent all limited partners at the partner-
14 ship’s expense, to negotiate the proposed trans-
15 action with the general partner or sponsor on
16 behalf of the limited partners, and to make a
17 recommendation to the limited partners with re-
18 spect to the proposed transaction, but not the
19 authority to provide consents or authorizations
20 to the proposed transaction on behalf of limited
21 partners;

22 “(C) the right not to have their voting
23 power unfairly reduced or abridged;

1 “(D) the right not to bear an unfair por-
2 tion of the costs of a proposed rollup trans-
3 action that is rejected; and

4 “(E) restrictions on the conversion of con-
5 tingent interests or fees into non-contingent in-
6 terests or fees and restrictions on the receipt of
7 a non-contingent equity interest in exchange for
8 fees for services which have not yet been pro-
9 vided.

10 As used in this paragraph, the term ‘dissenting lim-
11 ited partner’ means a holder of a beneficial interest
12 in a limited partnership that is the subject of a lim-
13 ited partnership transaction who casts a vote against
14 the transaction and complies with procedures estab-
15 lished by the association, except that for purposes of
16 an exchange or tender offer such term means any
17 person who files an objection in writing under the
18 rules of the association during the period during
19 which the offer is outstanding.”.

20 (d) EFFECT ON EXISTING AUTHORITY.—The amend-
21 ments made by this section shall not limit the authority
22 of the Securities and Exchange Commission, a registered
23 securities association, or a national securities exchange
24 under any provision of the Securities Exchange Act of
25 1934, or preclude the Commission or such association or

1 exchange from imposing, under any other such provision,
2 a remedy or procedure required to be imposed under such
3 amendments.

4 (e) EFFECTIVE DATE.—The amendments made by
5 this section shall become effective 18 months after the
6 date of enactment of this Act and shall apply to any secu-
7 rity resulting from a partnership rollup transaction (as
8 such term is defined in section 14(h)(4) of the Securities
9 Exchange Act of 1934) that is issued on or after the date
10 of enactment of this Act.

Passed the House of Representatives, March 2,
1993.

Attest: DONNALD K. ANDERSON,
Clerk.

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